IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Second Appeal No. 324 of 2001

(Old No. 1117/1993)

Date of decision :- 13-11-2006

A.F.R. (Approved for Reporting)

Not approved for reporting

Date :- 13-11-2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL
AT NAINITAL

Second Appeal No. 324 of 2001

(Old No. 1117/1993)

Gopal Singh Bist
S/o Shri Bagh Singh Bist
r/o village bara Patti Idwalsyun
District Pauri Garhwal .....Appellant

Versus

1. State of U.P. through the Collector, Pauri Garhwal
2. Block Development Officer Pauri Vikas Khand, Pauri
3. Rural Engineering Service Through the Executive Engineer Pauri .....Respondents

Mr. G. S. Negi learned Advocate for the appellant.
Mr. Parvesh Tripathi learned Standing Counsel.

Hon'ble J.C.S. Rawat, J.

1. The second appeal has been preferred under section 100 CPC by the plaintiff-appellant against the judgment and decree dated 08.07.1993 and 12.07.1993 passed by the District Judge, Pauri Garhwal in Civil Appeal No. 4/1992 dismissing the appeal and upholding the judgment and decree dated 12.12.1991 passed by the Civil Judge, Pauri in original suit No. 6/1991.

2. Brief facts of the case are that the plaintiff-Gopal Singh had to execute some work in accordance with the agreement arrived at between the plaintiff and the defendants. It is not disputed that the plaintiff had to execute the work according to the agreement and it is not disputed that the work was not completed by the plaintiff and the plaintiff was entitled for the price of the work done

by him. It is not disputed that the defendant supplied 60 quintals foodgrain, 35 bags of cement, 19 quintals of iron rods to the plaintiff. It is not disputed that the plaintiff received the above articles and the value of which was Rs.34,984.45. The only dispute arose in between the plaintiff and the defendants is that according to the plaintiff the price of the work done by him was Rs. 62,224.10/- in which the total value of the articles which were supplied to him were also included and the plaintiff claimed a sum of Rs. 27,239.55 alongwith interest @ 9% per annum. According to the defendants, the price of work done by the plaintiff was Rs. 19,730/- and a sum of Rs. 34,984.45 which was estimated for the articles supplied to the plaintiff were to be added in that amount. The defendant, therefore, alleged that a recovery of Rs. 15,254.45 was due against the plaintiff, but no counter claim has been filed. According to the defendants, there was no liability to pay the amount to the plaintiff.

3. The plaintiff in support of his evidence adduced the evidence of himself and Hemant Kumar Thapliyal PW2. Hemant Kumar Thapliyal PW2 valued the work done by plaintiff and stated that the valuation of the work done by the plaintiff was worth Rs.62,224.10 after measuring the work at the spot. It seems that Hemant Kumar Thapliyal PW2 had not considered the agreement which was arrived at between the parties. Perusal of the agreement arrived at between the plaintiff and the defendants clearly reveals that the defendants had to pay the charges

of unskilled labour and skilled labour @ Rs. 9 and Rs. 16 respectively. Apart this, the labours were also entitled to get 4kg foodgrain. According to the estimate, Hemant Kumar Thapliyal PW2 had charged Rs.42 to 45 for the labour charges and the amount of labour charges are in excess and in violation of the said agreement arrived at between the parties. Thus, the estimate of Hemant Kumar Thapliyal PW2 cannot be said that it is in accordance with the agreement of the parties. It is also stated in the estimate that the plaintiff had claimed the site development charges. The plaintiff had not shown in both the courts below that the site development was the part of the agreement. However, the site development charges have been included in the said estimate. It is also stated by the plaintiff that certain materials had been left at the spot which was taken into possession by the defendants. The articles which had been left at the spot had not been indicated in the evidence. It is not possible to assess the value of such articles in absence of details thereof.

4. It was contended on behalf of the appellant that the appreciation of the evidence made by both the courts below was perverse. As stated above, I do not find any perversity in the appreciation of the evidence by both the courts below. Perusal of the impugned judgment reveals that there is no perversity in the appreciation of the evidence. I am completely in agreement with the findings recorded

by the courts below. I do not want to restate the effect of the evidence or reiterate the reasons given by the courts below. Both the courts below have given the concurrent findings. The expression of general agreeing with reasons given by the courts below, decision of which is under appeal, would ordinarily suffice. **{See Girijanandini Devi Vs. Bijendra Narain Choudhary AIR 1967 SC p/1124 and Santosh Hazari Vs. Purushottam Tiwari AIR 2001 SC p965}**

5. The High Court in second appeal cannot proceed to re-appreciate the evidence. Even if the findings recorded by both the courts below were wrong, the findings of fact cannot be disturbed without coming to the conclusion that the findings recorded by the courts below were perverse i.e. misreading of evidence or based on no evidence. In the instant case the findings recorded by the trial court are not perverse.

6. The Hon'ble Supreme Court has held in **Santosh Hazari** (supra) that:-

> *"We need only remind the first appellate courts of the additional obligation cast on them by the scheme of the present section 100 substituted in the Code. The first appellate court continues, as before, to be a final court of facts, pure findings of fact remain immune from challenge before the High Court in second appeal. Now, the first appellate court is also a*

final court of law in the that its decision on a question of law even if erroneous may not be vulnerable before the High Court in the second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate court even on questions of law unless such question of law be a substantial one."

7. It has also been held in **Rajeshwari Vs. Puran Indoria 2005(7) scc p/60** that :-

> *"8. Before parting, we feel that we would be justified in pointing out that the amendment brought to section 100 of the Code w.e.f. 1.2.1977 by Act 104 of 1976, has really not advanced the cause of justice. Earlier, interference could be had under section 100 of the Code if the decision was contrary to law or some usage having the force of law; or the decision had failed to determine some material issue of law or usage having the force of law; or suffered from substantial error or defect in the procedure provided by the Code or any other law for the time being in force, which may possibly have produced the error or defect in the decision of the case upon the merits. The provision enabled the court to correct the errors of law or of procedure in an appropriate case and even unreasonable*

appreciation of evidence could have been brought within the contours of error of law in the circumstances of a given case. But by introducing the concept of "Substantial question of law" in section 100 CPC, the right of the litigant to have a decision after a reappraisal of the relevant materials by the High Court has been curtailed. Though courts of first appeal are made the final courts of facts, there are instances when the first appellate courts merely, mechanically confirm the findings of fact rendered by the trial court without an independent reappraisal of the pleadings and the evidence in the case. Since a judgment of affirmance need not be as elaborate as a judgment, reversing the decision of the court below, it is often contended that the judgment of the appellate court satisfies the requirements of Order 41 Rule 31 of the Code. There are occasions when the High Court feels the constraint of section 100 and reluctantly declines to interfere though interference would have been proper to ender justice between the parties. The High Court are often confronted with an argument that even if what was involved was a mixed question of fact and law or even a question of law, that did not constitute a substantial question of law justifying interference.

Under section 100 of the Code. Why cannot an error of law committed by the appellate court be corrected in the second appeal? Why should not a litigant have an opportunity of having the decision in his case corrected for an error of law by the High Court at the second appeal stage. When substantial question of law as expounded by this Court is only an open question of law substantial as between the parties, a restoration of the position as it existed prior to 01.02.1977 does not appear to be reopening of the door too wide."

8. In View of the above, I would like to indicate that all questions of law or fact or a mixed question of law and fact cannot be the substantial question of law. It is a well settled position of law that the scope of exercise of the jurisdiction by the High Court in Second appeal under section 100 is limited to be substantial questions of law. It was observed in Santosh Hazari case (supra) that a point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be a "substantial" question of law it must be debatable, not previously settled by the law of the land or a binding precedent and answer to the same will have a material bearing as to the rights of the parties before the court. As to what would be the question of law "involving in the case"

it was observed that to be a question of law "involving in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by the court of fact and it must be necessary to decide that substantial question of law for the just and proper decision between the parties. The jurisdiction of the High Court had been curtailed to correct the errors of law or the erroneous findings of fact of courts below even on question of law unless such question of law be substantial one.

9. In view of the foregoing discussion, I am of view that no substantial question of law arises for consideration in the present appeal. The appeal devoids of merit and is liable to be dismissed. Accordingly, the appeal is dismissed in limine. All the pending miscellaneous application (s) in this case, if any, shall stand disposed of accordingly.

(J.C.S. Rawat, J.)

Dated 13.11.2006

LSR